Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

Linda C. Hawkins, Trustee
Hawkins Family Trust

Petitioner(s)

V.

Vastar Resources, Inc.;
Oklahoma Corporation
Commission

Respondent

On Petition For Writ of Certiorari
To The Oklahoma Supreme Court

Petition For Writ Of Certiorari

Linda C. Hawkins,
Trustee
Post Office Box 532
Wilburton, Oklahoma 74578
(918) 465-5525

QUESTIONS PRESENTER FOR REVIEW

The lower state Courts show trend to support administrative authority, exercised to a degree not suggested by Legislation and otherwise prohibited by the Constitution.

Can a administrative body assume authority prohibited to it by the State and U.S. Constitutions? Without consent to the contrary can the administrative body nullify Petitioner's Constitutional and Statutory Protections?

Can the state uphold administrative order that conflicts with the U.S. Constitution and decisions of the Supreme Court of the United States?

Can administrative body sit over matters outside of its jurisdiction, which include any matter that the public interests are not directly involved, when objections and asserted rights are timely made, notwithstanding, case holding exist where mineral owner relinquished rights, that limit the jurisdiction of the administrative body, allowing the administrative body to sit out of its Constitutionally restricted jurisdiction ?

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW ----------i
TABLE OF CONTENTS ----------ii
TABLE OF AUTHORITIES----------ii,iii
CITATIONS----------1
BASIS FOR JURISDICTION----------2
PROVISIONS INVOLVED IN CASE----------2
STATEMENT OF THE CASE----------3
ARGUMENT----------4 -13
CONCLUSION----------13

APPENDIX
IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA
PETITION FOR CERTIORARI DENIED ----------1.1
IN THE COURT OF CIVIL APPEALS OF
THE STATE OF OKLAHOMA
AFFIRMED (Lower administrative order)----------1.2
CONSTITUTIONAL PROVISIONS ----------1.3
STATUTORY PROVISIONS----------1.4
(Continue) STATEMENT OF THE CASE----------1.5

TABLE OF AUTHORITIES

PAGE

ANDERSON vs CORPORATION COMMISSION
327 P.2d 699 ----------5
ANDERSON vs ELLISON, 282 F. 2d 484 ----------5
ANDERSON - PRICHARD OIL CORP. vs
CORP COM'N, 241 P.2d 363 ----------5,9
FUENTES vs SHEVIN, 407 U.S. 67 ----------11
ATLANTIC RICHFIELD CO. vs
TOMLINSON, 859 P.2d 1088 ----------6,8,9

KEIZOR vs SAND SPRINGS RY CO., 861 P2d 326 ----10
LECK vs CONTINENTAL OIL CO., 800 P.2d 224------7
MARATHON OIL vs CORPORATION
COMMISSION 910P.2d 966----------7,10
PANHANDLE EASTERN PIPELINE CO. vs.
STATE HIGHWAY COM'N, 294 U.S. 613----------10
PETER FOX BREWING CO. vs SOHIO
PERTELEUM 189F. Supp. 743----------7
RANOLA OIL CO.vs. CORPORATION
COMMISSION 752 P2d 116----------5
SAMSON RESOURCES CO. vs. CORP.
COM'N, 702 P.2d 19----------6,7
THOMPSON vs.CONSOLIDATED GAS
UTILITIES CORP., 300 U.S. 58, 79 ¶3-80----------4,8,10
WARD vs CORP. COMN., 501 P.2d 503----------8

TITLE 52 O.S §87.1 (e)----------6-13
TITLE 52 O.S. §570.9----------13
TITLE 52 O.S. §570.14----------11,12,13
18 U.S.C. §§ 241, 242----------12
42 U.S.C. § 1983----------10,12,13
15 U.S.C. §§ 1-7----------10,12
OKLAHOMA CONSTITUTION
ARTICLE I §1----------4
ARTICLE II §23----------9
ARTICLE VII, §7----------7,11
ARTICL II, §§2,6,7,23,33----------10
U.S CONSTITUTION
AMENDMENT 5 &14----------9,12,13
ARTICLE VI, ¶2----------13
ARTICLE 1-3----------11,13

CITATION ENTER IN CASE

In THE SUPREME COURT OF THE STATE OF OKLAHOMA, Petition for Certiorari denied, case 95,878, November 20, 2001.

In THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, Division III, AFFIRMED (Appeal from The Oklahoma Corporation Commission), September 8,2001. Not for official Publication.

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Order of the Commission, Cause CD. 200001579, order No. 448282.

REPORT OF THE APPELLATE REFEREE September 28, 2000

REPORT OF THE ADMINISTRATIVE LAW JUDGE July 28, 2000

BASIS FOR JURISDICTION

Date of order denying discretionary review November 20, 2001
Statutory Provision include 28 U.S.C 1651; 28 U.S.C §1257; 42 U.S.C §1983; 28 U.S.C. §241, 242; 15 U.S.C.
1-7 et seq

PROVISIONS INVOLVED IN CASE

Amendment 5 & 14 U.S. Constitution
Supermecy Clause, Article VI, ¶2 U.S. Constitution
Article II, §2, 6, 7, 23, 33 Okl' Constitution
Article I, §1 Okl' Constitution
52 O.S. §87.1 (e)
Title 52 O.S. §570.9
Title 52 O.S. §570.14 (A)

STATEMENT OF THE CASE

Prior to any hearing, and continuingly asserted thereafter, Petitioner expressly asserted all pertinent rights prior to the administrative body assuming jurisdiction over Petitioner's private and Constitutionally protected rights. No rights were ever acquired or become vested by Respondent. The Respondent, Commission and court all acknowledged Petitioners asserted rights to no avail.

[Records page 158] PRE-HEARING CONFERENCE AGREEMENT, May 9, 2000, Cause CD No. 200001579.

1) Minerals are not for sale

2) Firmly assert Article 2, Section 23 (Okla. Const.);

full length of first paragraph in Title 52 O.S. 87.1 (e).

3) Object to the Commission sitting over any matters relating to private rights.

4) Reserve all pertaining jurisdictional, statutory and constitutional protections of both the U.S and Oklahoma Constitutions, including, but not limited to, the 14th Amendment to the U.S. Constitution and Title 52 O.S. 87.1

SEE APPENDIX 1.5

ARGUMENT

The Oklahoma Corporation Commission (Commission), State Courts and the Respondent all elude the Supermacy Clause and the Separation Of Powers mandate of the United States Constitution, in respects to Petitioner's asserted rights in regards to Petitioner's Constitutionally mandated protected mineral and correlative rights. The case indicated the Respondent and the State Courts claim disbelieve that Constitutional mandated Rights could be applied to the rights of a private persons when not waived.

However, the jurisdictional limitations of the administrative body are directly measurable by the Supermecy Clause and the Separation of Powers mandate of the Constitution. This Court in THOMPSON vs. CONSOLIDATED GAS UTILITIES CORP., 300 U.S. 58, 79 ¶3-80, issued controlling authority in that private ownership shall never benefit another private person under authority of law without consent or waiver of the owner.

This case specifically deals with rather or not a administrative agency (Commission), under claim of "exercise of the police power," can diminish Petitioner's Constitutionally mandated protections of mineral ownership and rights without consent.

The long term effect and ramifications of a administrative agency exercising authority prohibited by the Constitution is too vast to measure and such has been warned by the Court and the framers of the Constitution.

Respondent uses cases out of context of this case, to circumvent the Supermacy Clause and the Separations of Powers mandate of the Constitution. Specifically Respondent uses case(s) where there were no reservations, or otherwise open waiver, of Constitutiona protections prior to the administrative agency sitting over matters of private rights between the parties. (Such as trade of interests, sales of interest, Contractual relationship or profit outside of the expressed limits of the Conservational pooling mandate etc.). However, the Constitution was held not to have been violated when no assertions of rights are made. The contract issued or drafted by the administrative body was held to apply and such did not violate the Constitution when the "correlative (mineral) rights" owner waived their Constitutional and Statutory protections. ANDERSON vs. COPORATION COMMISSION, Okl., 327 P.2d 699, 700; ANDERSON vs. ELLISON, 285 F.2d 484, 485; RANOLA OIL CO. vs. CORPORTATION COMMISSION 752 P.2d 1116, 1116-1120. See ANDERSON - PRICHARD OIL CORP. vs CORP. COM'N, 241 p2d 363, 371-372.

This case, however, all jurisdictional rights were expressly asserted prior to Commission sitting out of its primary and Constitutional limited authority and jurisdiction then over private matters between two owners in which the public interest would not be changed or affected regardless of the outcome. (Emphasis Added).

In spite of the asserted rights by Petitioner reaching both the Supremacy Clause and Separation

of Power mandate, the administrative order provided no means for Petitioner to remain clothed with the mandate of the Constitution for the full length of any production. The said order was drafted in such manner as to cause Petitioner to waiver Constitutionally protected rights. See Record page 199-217.

This administrative agency has no granted authority under the Constitution, or otherwise, to compel, under the Color of Law, the sale of ownership or the waiver of Constitutional mandated protections and require Petitioner to become a joint or co-partner with Respondent Vaster. This compels Petitioner to become liable to third person's or the public for neglect or actions of Respondent, requires the sale of ownership of correlative mineral rights, and/or straight waiver of Constitutional protections. All of which is not the intent of the Constitution nor Legislation especially by an administrative body.

"Correlative mineral rights" is the term used to specifically define Petitioner's private proportion of Constitutionally protected mineral ownership in a Common Source Of Supply(s).SAMSON RESOURCES CO. vs. CORP. COM'N, 702 P.2d. 19,22 [1].

Private rights or matters include any matter in which the publics interests are not directly an issue which the Commission has no jurisdiction including the trade of interests, sale of interests, or contractual relationship to any degree beyond expressed limits in Title 52 O.S §87.1(e). ATLANTIC RICHFIELD CO. vs. TOMLINSON, 859 P2d 1088, 1095-1096;

SAMSON RESOURCES CO. vs. COPR, COM'N, supra, at pg. 23 [2]; PETER FOX BREWING CO. vs. SOHIO PETROLEUM; 189 F. Supp. 743,750; Article 7, §7, Okla. Const.; LECK vs. CONTINENTAL OIL CO., 800 P2d 224, 226 (Okl., 1989); MARATHON OIL vs. CORPORATION COM'N 910 P2d. 966, 969.

While the Commission has no jurisdiction over purely private matters or rights in which the public's interest are not directly involved, the Commission is required by Legislation and the Constitution to protect all other non-drilling owner's mineral/correlative rights. Title 52 O.S. 87.1(e).

Inconsistency of federal law in state level stems from wide variety of state holdings regarding Constitutional protected mineral rights. The majority are product of the "Constitutionally protected mineral estate and correlative rights owner" waiving jurisdictional requirements and Constitutional limitations of the administrative body, which then, the said body sits over matters such as sale and other private matters between the parties.

Eventhough done in "waiver of jurisdictional rights" cases the Respondent here holds the apparent position that the administrative agency, in all cases, has been granted the authority under the "exercise of police power" to order property ownership to be taken from private person and given to another and/or to remove private person's Constitutional protections. See State court holding Appendix 1.2; Record pg. 119-217.

This case requires that State Legislation be

exercised fully as expressed in Title 52 OS 87.1(e), and exercised within the limits set by the Constitution and mandatory authority of this Court. Thus, no waiver exists.

The United States Supreme Court many times warned against the practice now exercised by the State. THOMPSON vs. CONSOLIDATED GAS UTILITIES CORP., supra.

On the other hand, however, other state holdings hold true to the requirements set by this Court in THOMPSON when the correlative mineral owner waived no Constitutional protections. ATLANTIC RICHFIELD CO. vs. THOMLINSON, supra, at 1095 [5,6], [7], [8-10], [11]; WARD vs. CORP. COM'N, 501 P2d 503, 507-508 (Articles 2, §23, Okla. Const.)

In cases without waiver of Separations of Powers, Supremacy Clause, or other Constitutional mandate the State held that once the mineral owner is barred their right to dill, under the spirit of conservation, that they are intitled to their share of gross production, and that the drilling/capturing person(s) no longer could keep its full capture. See ATLANTIC, supra. This solution allows non-drilling owners to remain clothed with the mandate of the Constitution and not allow the drilling of unnecessary wells.

Legislation in its duty of issuing its intent did so where the mineral/correlative rights owner who was state prohibited to exercise right to drill, and waived or sold no rights, would receive its full correlative share and rights. The drilling person also received the right to recover some of its cost from non-drilling owner's share of gross

production. However Legislation held true to the mandatory authority of this Court , and the State Constitution (Article 2, §23) and U.S. Constitution, Amendment 5 & 14, by prohibiting profit without consent from the correlative mineral rights owner. Title 52 O.S. §87.1(e). See ATLANTIC, supra.

Respondent contends under the exercise of police power that administrative authority unrestrictively can grant a private person another private person's interests, or profit, without consent (Art. 2, § 23, Okl. Const.), and/or nullify the right to remain clothed with the Constitution, notwithstanding, that this Court and state holdings have issued to the contrary. See WARD, supra.

Protection of Petitioner's correlative rights is required by Legislation and the Constitution upon the point Petitioner is barred from exercising the right to drill. At such point the administrative agency had no discretionary options at all and must protect Petitioner's full share. ATLANTIC supra. at 1095 [5,6], [7]; Title 52 O.S. §87.1(e).

Under the Conservation Law (Title 52 O.S. §87.1(e)) the loss of capture that drilling person comes to acquire must be distributed to the rightful owners is not a violation of the due process mandate the Constitution when others are prohibited to drill. ANDERSON - PRICHARD OIL CORP. vs. CORP. COM'N, 241 P2d 363, 371-372; ATLANTIC supra, at 1095-1096 [5,6], [7], [11].

Arbitrary and inconsistent application of federal requirements by State is because no holding exist to define the point, in a case's time line, that rights become permanently vested to one and waived by

another. (Emphasis Added). This case however, has consistent assertions of rights and, thus, has no waiver point in the case.

This Court has held, contrary to Respondent, that action taken under the police power cannot disregard the mandate of the Constitution. PANHANDLE EASTERN PIPE LINE CO. vs. STATE HIGHWAY COM'N 294 U.S. 613, 619, 621, 622; MARATHON, supra; Appendix 1.2,¶14,15.

State legislation drafted Conservational measures within the mandatory authority of the Supreme Court and within the mandate of the Constitutional 5th & 14th Amendment, and its State constitutional counterpart Article 2,6,7,23,33; by its expressed intent of Title 52 O.S. §87.1 (e), notwithstanding, the numerous out of context state case holdings in which the said Conservational mandate was applied, without objection to private person's correlative/minerals rights, to a degree outside of the Suprmecy Clause, Separation of Powers mandate, and mandatory authority of this Court. See THOMPSON, supra.

Legislation required pooling of owners but does not grant ownership to be taken from one private person and give to another, does not prohibit production and commerce rights of non-drilling owners, does not grant profit, does not deny non-drilling owner right to remain clothed under the Constitution. 15 U.S.C. §1-7 et sea., 42 U.S.C. §1983; KEIZOR vs. SAND SPRINGS RY CO., 861 P2d 326, 328.(Emphasis Added).

Legislation, pursuant to its Separation Of Powers duty, expressed its "pooling" mandate that no

owner can exercise their right to drill unless at drilling person are entitled to no profit from other owners (not to be confused with Leasing, selling or consenting owners, where as, the drilling person does not acquire such interest under the Color Of Law but rather by consent of non-drilling owner); that drilling person(s) are entitled to non-drilling correlative mineral rights owner's share of production until cost (actual) are paid and that the Commission must protect the "correlative right " of the non-drilling owner. Title 52 O.S. § 87.1(e),

Other State Legislation also drafted within the mandatory authority of this Court 52 O.S. § 570.14 "District Courts, not a administrative agency, has sole and exclusive jurisdiction to determine the entitlement of any owner in a well to 1) It's share of proceeds from production ***" reflect lack of jurisdiction to said administrative body over private rights.

Without waiver to the contrary the administrative Commission has no authority beyond expressed Legislative intent and the Separation Of Powers mandate. U.S. Constitution, Aritile 1-3.

The ramifications of an administrative body exercising, without consent, authority not granted to it (Art 7, 7, Okl. Const.) far exceeds this case and tends to dissolve the integrity of the court system and the Constitution itself, notwithstanding, defeat the Constitutionally upheld Conservation Laws expressed in Title 52 O.S. § 87.1 (e).

This Court has held that petitioner is Constitutionally entitled to Legislative expressed specific mandate FUENTES vs SHEVIN, 404 U.S.

67, 86, "Fourteenth Amendment's protection of property does not safeguard only rights of undisputed ownership but extends to any significant property interest including "statutory entitlements". TITLE 52 O.S. §87.1(e), 52 O.S. §570.14.

The ramifications of allowing administrative agency to sit out of it Constitutional restraints are already evident by the lower court's lack of ability to expressly quote controlling portions of Legislative mandate in Title 52 O.S. §87.1. And then of course show the specific reasons the said quoted portions of Legislative mandate does not apply to Petitioner (Emphasis Added). See September 28, 2001 holding of the State Court. (Appendix 1.2)

Not to expressly address Legislative mandate asserted by Petitioner, with specific reason as to why or why not expressed language does or does not apply, including all asserted Constitutional mandated protections, renders the state exhaustion process a miscarriage of justice at minimum. 42 U.S.C §1983 et. seq., 18 U.S.C. §§241, 242; 15 U.S.C. §1-7 et seq., Amendment 5,14, U.S. Constitution.

Nevertheless, Constitutionally protected Legislative mandate has been drafted within the directives set by the Court and sanctioned by the Constitution regarding Petitioner's Constitutionally protected correlative/mineral rights and Petitioner's commerce and production rights. The state process show "non-compliance" although required by Supreme Court holdings when it comes to reserved Constitutional rights. And further

shows open opposition to United States Supreme Court holdings, the Supermacy Clause, and the Separation of Power mandate of the Constitution itself. U.S Constitution, Article 1- 3; Article VI, ¶2; TITLE 52 O.S. §§570.9, 570.14.

CONCLUSION

Therefore, Petitioner asserts all Rights and waives none and does Petition that the writ issues because of the defeat and destruction of the Constitution is evident in this case.

That the Writ should be issued by this Court to promote uniformity and consistency of Constitutional mandate in the state and in its administrative agency(s) where full Constitutional mandated protections have been assured, asserted and reserved.

That the Writ should issue, whereas, the state had taken opposition and/or non-compliance to the authoritative holdings and requirements of this Court.

And that the Constitution as old or young as it is this day, should still be held to the Supermacy mandate (Article VI)., the Separation Of Powers mandate (Articles I-III), and the Due Process of Law mandates (Amendment 5 & 14), in all areas where property rights may be transferred to another

private person by authority or order under the Color Of Law.

Separation of Power mandate and Legislation (Title 52 O.S § 87.1(e)) expressly define the outcome of any pooling order when the administrative body receivers no waiver of its jurisdictional and Separation of Power limits. Nor acting under the Color of Law and claim of police power can the administrative body, and persons acting in cooperation therewith, circumvent the mandated rights, privileges and immunities secured by the Constitution. (Title 42 U.S.C. §1983). The administrative agency without waiver or consent has no discretionary authority to require private sale of interest or require loss of Constitutional mandated protections guaranteed to the property owner of the mineral and correlative rights. Legislation expressly defines the outcome of Conservational pooling without waiver of the Separation of Powers and Constitutional limits of the administrative body to no value in the state court holdings. (Appendix 1.2).

Date: February 15, 2002

RESPECTFULLY SUBMITTED,

_____

PETITIONER

APPENDIX 1.1

SUPREME COURT
STATE OF OKLAHOMA
IN THE SUPREME COURT OF THE UNTIED STATES OF OKLAHOMA

Nov. 20, 2001
Tuesday, November 20, 2001
JAMES W. PATTERSON
CLERK

Case No. 95,878

Linda C. Hawkins, Trustee Hawkins, Trustee Hawkins Family Trust v. Vastar Resources, Inc.
Petition for certiorari is denied.
CONCUR: Hargave, C.J., Waltt, V.C.J., Hodges, Lavender, Kauger, Boundreau, Winchester, JJ.
CONCUR IN RESULT: Opala, J.
I would amend the Court of Civil Appeals opinion to Provide procedural instructions for the post-remand hearing on Vastar's counsel fee award.
CONCUR IN PART; DISSENT IN PART: Summers, J. (joins Opala, J.)

R. Hargave
CHIEF JUSTICE

S/R Hargrave
CHIEF JUSTICE

APPENDIX 1.2

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA
DIVISION III

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA
SEP. 28 2001
JAMES W. PATTERSON
CLERK

LINDA C. HAWKINS, individually, and as TRUSTEE, HAWKINS FAMILY TRUST,
Respondent/Appellant,
vs.
VASTAR RESOURCES, IN Case No. 95,878
Applicant/Appellee.
APPEAL FROM THE OKLAHOMA CORPATION COMMISSION

AFFIRMED
Linda C. Hawkins,
Wilburton, Oklahoma Pro,se.

John R. Reeves,
J. Matthew Thompson,
MOCK, SCHWABE, WALDO, ELDER,
REEVES & BRYANT,
Oklahoma City, Oklahoma, For Appellee.

OPINION BY CAROL M. HANSEN, CHEF JUDGE:

¶1 Appellant, Linda C. Hawkins, individually and as Trustee, Hawkins Family Trust (collectively Hawkins), appeals from an order of the Oklahoma Corporation Trust Commission (Commission) granting a forced pooling application by Appellee, Vastar Resources, Inc. (Vastar). We find Commission had jurisdiction to order Haskins' mineral interest pooled and that its process in doing so was constitutionally correct. We affirm.

¶2 In its application, Vastar requested Commission enter an order "pooling the drilling rights and fixing the determining the equities with respect thereto" for various separate common sources of supply in the drilling and spacing units formed in section 7, Township 4 North, Range 20 East, Latimer County, Oklahoma. Vastar also asked that it, or someone recommended by it, be designated operator for drilling and development f the units formed. This was a "cleanup" pooling request pertaining particularly to Hawkins. Commission had issued a previous general pooling order naming Vastar as operator.

¶3 At the hearing before Commission's Administrative Law Judge (ALJ) on Vastar's presents application, Vstar's expert witness testified Vastar had attempted, but was unable, to reach an agreement with Hawkins on pooling her interests. Vastar had offered Hawkins the options contained in Commission's previous pooling order for Section 7, *i.e.* participation in drilling of the proposed well, or a choice of three different combinations of cash bonus and royalty. Vastar's witness further testified

the options were based on fair market value of leasing activity in that area and explained the estimated costs of drilling.

¶4 Hawkins did not, and does not, dispute that testimony of Vastar's witness. She instead asserted legal disputing Commission's jurisdiction and the constitutionality of Commission's pooling orders. She argued Commission lacked jurisdiction because pooling her mineral interest concerned "purely private matters in which public interests are not involved." She further argued Commission would have jurisdiction to pool her interests only if she consented to her interests being pooled.

¶5 The ALJ recommended Commission order Hawkins' interest pooled with the same options contained in the previous order. The ALJ's report summarized and rejected by Commission in several previous proceedings in which Hawkins was a party.

¶6 Hawkins' appeal of the AJL's report was referred to the Oil and Gas Appellate Referee, whose report affirmed the ALJ's report. In issuing its pooling order Commission adopted the findings and recommendations of the ALJ, as recommended by the Referee. Hawkins appeals from Commission's pooling order.

¶7 The appellate standard of review on appeals from order of Commission is set forth at Oklahoma Constitution, Art. IX, §20:

> ...The Supreme Court's review appealable orders of the Corporation Commission shall be judicial only, and in all appeals involving an asserted violation of any right of the parties under the Constitution of the

> United States or the Constitution of the State of Oklahoma, the Court shall exercise its own independent judgment as to both the law and the facts. In all other appeals from orders of the Corporation Commission the review by the Supreme Court shall not extend further than to determine whether the Commission has regularly pursued its authority, and whether the findings and conclusions of Commission are sustained by the law and substantial evidence...

¶8 We share both Vastar's assessment that "it is somewhat difficult to follow the legal argument presented by [Hawkins] in her Brief", and its conclusion that it appears the main premise of Hawkins' appeal is that it is unconstitutional for Commission to force pool her interests without her consent. It appears she also reiterates her assertion before Commission that without such consent she is entitled to participate in the proposed well without paying any of the costs before drilling. We find Hawkins' contentions, as we understand them, clearly without support.

¶9 Commission's authority to order "force" pooling of mineral interests is derived statutorily from 52 O.S. Supp. 1993 § 87.1 (e), which provides, in pertinent part:

> ...Where however, [to or more separately owned tracts of land or undivided interests are embraced within an established spacing unit] such owners have not agreed to pool their interests and where one such

> separate owner has drilled or proposes to drill a well on said unit to the common source if supply, the Commission, to avoid the drilling of unnecessary wells, or to protect correlative rights, shall, upon a proper application therefor and a hearing thereon, require such owners to pool and develop their lands in spacing unit as a unit.

¶10 Contrary to Hawkins' contention, Constitutionality of forced pooling pursuant to § 87.1 has long since been decided in Oklahoma law, and has repeatedly been upheld under constitutional attack. In an opinion cited by Hawkins, *Anderson v. Corporation Commission,* 1958 OK 38, 327 P2d 699, the Supreme Court expressly held § 87.1 was not in conflict with provisions of the state and federal constitutions respecting property rights not being taken for private use nor without due process of law.

¶11 In *Anderson,* Anderson was, as Hawkins is here, owner of a separate interest in a spacing unit, and was the only owner that had not agreed to a development plan for the unit. Commission authorized drilling of a well, set the terms of participation, and ordered that if Anderson had not made an election within thirty days he would be presumed to have elected to take a leasehold bonus rather than participate. The Supreme Court affirmed Commission's order.

¶12 The *Anderson* Court noted that it had on several previous occasions held that unitization and pooling statues were constitutional as the proper

exercise of the state's police power. The Court went on to state:

> ... The order complained of did not constitute a taking of property of Anderson in any manner. It granted him a well on Ellison's property, but on conditioned that certain requirements were met.
>
> ... That he was allowed to share in the production or to receive a bonus instead of that participation was a grant to him at the expense of Ellison merely because of the recognition of correlative rights.
>
> ... Both were forced to cooperate for the benefit of both and for the protection of the public generally.

Anderson, at 702.

¶13 Hawkins cites no legal authority contrary to *Anderson.* Although she purports to cite cases which support her positions, she fails to demonstrate how any of those cases apply here. Mere assertion of legal principles, even if otherwise correct, is of no avail if circumstantially irrelevant. We find *Anderson* dispositive of Hawkins' jurisdictional and constitutional contentions regarding Commission's right to require her to pool her interests with that of others in the drilling and spacing units.

¶14 Hawkins is equally unsuccessful in making an argument that § 87.1 applies only to interest owners who agree to pooling. She seems to ignore the express terms of that section, as quoted above, which mandates that Commission, "to avoid the drilling of unnecessary wells, or to protect correlative rights", require pooling where owners

have not agreed to pool their interests. Section 87.1 makes no distinction as to differing rationales for not agreeing to pool. We have noted that under *Anderson* such forced pooling is a proper exercise of the state's police power for the benefit and protection of both the owners and the public generally. Hawkins' assertion that Commission may not exercise jurisdiction over her interests without a waiver of her constitutional rights is contrary to the clearly expressed, and constitutionally sound, legislative purpose of § 87.1.

¶15 Finally, as to the last of Hawkins' contentions, it is well settled that Commission may order interest owners, electing to participate in drilling of a well, to pay his or her proportionate share of costs before drilling. Hawkins' position is that because she refuses to consent to pooling she is entitled to have her proportionate share of costs deducted from her proportionate share of production, if any, with Vastar being able to recover costs through a statutory lien under § 87.1. Further, it seems she argues § 87.1 only allows the operator to recover the costs of drilling from production, with no right to additional production as profit.

¶16 As before, Hawkins' position is inconsistent with the language and purpose of § 87.1 and finds no support whatsoever in Oklahoma law. Under Hawkins' theory, even if the § 87.1 lien was applicable, virtually the entire risk of loss would be on the operator, Vastar. Section 87.1 does provide for a lien upon the mineral leasehold estate or rights owned by other owners, and upon their share of production, but common sense dictates that if there is no production, the lien is essentially worthless.

¶17 In *Ranola Oil Co. v. Corporation Commission,* 1988 OK 28, 752 P.2d 1116, the Supreme Court held the purpose of forced pooling was to "equalize the risk of loss by forcing all of the oil and gas interest owners to choose in advance whether they will share in both the benefits and risks of oil and gas exploration."
Implementation of § 87.1 to require such a choice is a constitutional exercise of the police power. *Id.,* at 1119.
¶18 Where interest owners elect not to take a real risk by paying their proportionate share before drilling, it would be inequitable to allow those owners to share in the rewards of development. *Id.,* at 1120. Hawkins' self-serving interpretation of §87.1 would render it meaningless and defeat its very purpose. No operator would assume all risk of exploration with no hope of making a profit. As a result, one of this state's most valuable resources would be left fallow, a result contrary to our public interests.
¶19 Hawkins' contentions are, as a matter of law, without merit. Hawkins has not contended that Commission's order was unsupported by substantial evidence. The record reveals that it was. Accordingly, Commission's order is AFFIRMED.
¶20 Simultaneously with filing its Answer Brief, Vaster filed a Motion to Dismiss and Request for Sanctions. Vaster's argument for dismissal of Hawkins' appeal was essentially that because the issues here had been unsuccessfully raised either by or on behalf of Hawkins on three pervious occasions, the present appeal was frivolous. The Supreme Court deferred action in Vastar's motion

until the decisional stage. The basis of Vastar's motion for dismissal is not one recognized under Supreme Court Rule 1.6(c)(1). For that reason its motion to dismiss is DENIED.

¶21 Vastar also asks that it be awarded appellate attorney fee in accordance with 20 O.S. 1991 § 15.1, which provides:

> On any appeal to the Supreme Court, the prevailing. Party may petition the court for an additional attorney fee for the cost of the appeal. In event the Supreme Court or its designee finds that the appeal is without merit, any additional; fee may be taxed as costs.

¶22 In *TWA/REDA Pump v. Brewington,* 1992 OK 31, 829 P,2d a5, the Supreme Court defined those appeals the Legislature sought to deter by §15.1 as those which have absolutely no legitimate legal or factual basis and the result is obvious. To determine if an appeal is frivolous for the purposes of §15.1, we must look to the record as a whole, and any doubt on that point should be resolved in favor of the appellant. *Id.,* at 23.

¶23 We find an award of appellate attorney fees to Vastar is justified. If not for what appears to be plain obstinacy, Hawkins had information available to her long before this appeal which should have convinced her she had absolutely no legal basis for her contentions. The record reveals Hawkins has been associated with at least four previous appeals in which substantially the same arguments she raises here have been categorically rejected. Each of the four were decided by unpublished opinions of the Court of Civil Appeals.

¶24 In the first three appeals – No.'s 87,885; 89,249 and 89,958 – the appeals were actually brought in the name of Hawkins' lessee, but the leases were executed after the pooling orders there. Hawkins did, however, appear *pro se* before Commission in support of the lessee's contentions, which were substantively her contentions here. In the first two of these cases the Petition for *Certiorari* was denied without dissent and mandate was issued in March 1998. In the latter case, no Petition for *Certiorari* was filed and mandate was issued in October 1998.

¶25 While we recognize these unpublished Court of Civil Appeals opinions have no precedential authority, they do clearly point out to Hawkins the total lack of merit of her appellate contentions, with Oklahoma Supreme Court citations particularly supporting the constitutionality of Commission's pooling orders. Additionally, the record shows the reports of Commission's ALJ's dealt extensively with the issues Hawkins now raises again and that Hawkins appeared in those matters.

¶26 More importantly, however, Hawkins was the appellant in the fourth and last appeal, No. 93,275. The issues there were again substantively the same as the issues she raises here. In that appeal, as it was in Appeal No. 87,885, *Anderson* was cited for the opposite position taken by Hawkins as to constitutionality of Commission's forced pooling orders. The Court of Civil Appeals – in No. 93,275 – also found *Anderson* to be dispositive of the issues Hawkins raised and explained its rationale for that conclusion in great detail. The Supreme Court unanimously denied Hawkins' Petition for

Certiorari, as it had in the other appeals where Hawkins was involved.

¶27 The Court of Civil Appeals opinion in 93,275 was handed down in April 2000. *Certiorari* was denied in June 2000. Hawkins did not file a motion for rehearing and mandate was issued on February 2, 2001. Hawkins filed her Petition in Error in this case on February 20, 2001.

¶28 The record established that when Hawkins filed her Petition in Error here, she was aware the legal positions she propounded had been clearly and repeatedly rejected by our appellate courts. While the relevant Court of Civil Appeals opinions did not have precedential effect, they unequivocally, to all but the most jaundiced reader, established that she could have no reasonable expectation of success in her appeal. It had been brought to her attention over and over that her arguments were wholly without merit.

¶29 The record also shows Hawkins was aware that appellate attorney fees were a possibility because they had been requested and denied in Appeal No. 93,275. She nonetheless persisted here after mandate in that appeal had been issues. Hawkins may not be excused because she is not schooled in the law. Litigants proceeding *pro se* are charged with the responsibility of complying with the rules of pleadings, evidence and appellate practice. *Funnel v. Jones* 1985 OK 73,737 P.2d

¶30 Vastar's request for an award of appellate attorney fees pursuant to 20 O.S. 1991 §15.1 is GRANTED. This matter is therefor REMANDED to Commission for determination of reasonable attorney fees in accordance with *State ex rel. Burk*

v. Oklahoma City, 1979 OK 115, 598 P2d 659. *See, Public Service Co. of Oklahoma v. Norris Sucker Rods,* 1995 OK CIV APP 101, 917 P.2d 992. BUETTNER, P.J., concurs; GARRETT, J., concurs in result.

Appendix 1.3

CONSTITUTION OF THE UNITED STATES OF AMERICA

Article VI

[2] This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United Sates and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the united States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person with its jurisdiction the equal protection of the laws.

CONSTITUTION
OF THE
STATE OF OKLAHOMA

ARTICLE I. §1. Supreme law of land

The State of Oklahoma is an inseparable part of the Federal Union, and the Constitution of the United States is the supreme law of the land.

ARTICLE II - BILL OF RIGHTS

§2. Inherent rights

All persons have the inherent All have inherent right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their owned industry.

§ 6. Courts of justice open - Remedies for wrongs - Sales, denial or delay. The Courts of justice of the State shall be open to every person of justice of the Sate shall be open to every person, and speedy and cretin remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial delay, or prejudice.

§7. Due process of law

No person shall be deprived of life, liberty, or property, without due process of law.

§23. Private Property - Talking or damaging for private use

No private property shall be taken or damaged for private use, with or without compensation, unless by consent of the owner, except of private ways of necessity, or for drains and ditches across lands of others for agricultural, mining, or sanitary purposes, in such manner as may be prescribed by law.

§33. Effect of enumeration of rights

The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by, the people.

Appendix1.4

OIL AND GAS

TITLE 52 O.S. §87.1(e)

(e) The drilling of any well or wells into any common source of supply for the purpose of producing oil or gas therefore, after a spacing order has been entered by the Commission covering such common source of supply, at a location other than that fixed by said order is hereby prohibited. The drilling of any well or wells into a common source of supply, covered by a pending spacing application, at a location other than that approved by a special order of the Commission authorizing the drilling of such well is hereby prohibited. The operation of any well drilled in violation of any spacing so entered is also hereby prohibited. When two or more separately owned tracts of land are embraced within an established spacing unit, or where there are undivided interests separately owned, or both such separately owned tracts and undivided interests embraced within such established spacing unit, the owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owners have not agreed to pool their interests and where one such separate owner has drilled or proposes to drill a well on said unit to the common source of supply, the Commission , to avoid the drilling of unnecessary wells, or to protect correlative rights, shall upon a proper application therefor and a hearing thereon, require such owners to pool and develop their lands in the spacing unit as a unit. The applicant shall give all the owners whose addresses are known or could be known through

the exercise of due diligence at least fifteen (15) days' notice by mail, return receipt requested. The applicant shall also give notice by one publication, at least fifteen (15) days prior to the hearing, in some newspaper of general circulation published in Oklahoma County, and by one publication, at least fifteen (15) days prior to the date of the hearing, in some newspaper published in the county, or in each county, if there be more than one, in which the lands embraced within the spacing unit are situated. The applicant shall file proof of publication and an affidavit of mailing with the Commission prior to the hearing. All orders requiring such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or received without unnecessary expense his just and fair share of the oil and gas. The portion of the production allocated to the owner of each tract or interests in a well spacing unit formed by a pooling order shall, when produced, be considered as if produced by such owner from the separately owned tract or interest by a well drilled thereon. Such pooling order of the Commission shall make definite provisions for the payment of cost of the development and operation, which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision. In the event of any dispute relative to such costs, the Commission shall determine the proper costs after due notice to interested parties and a hearing thereon. The operator of such unit, in

addition to any other right provided by the pooling order or orders of the Commission, shall have a lien on the mineral leasehold estate or rights owned by the other owners therein and upon their shares of the production from such unit to the extent that costs incurred in the development and operation upon said unit are charge against such interest by order of the Commission or by operation of law. Such liens shall be separable as to each separate owner within such unit, and shall remain liens until the owner or owners drilling or operating the well have been paid the amount due under the terms of the pooling order. The Commission is specifically authorized to provide that the owner or owners drilling, or paying for the drilling, or for the operation of a well for the benefit of all shall be entitled to production from such well which would be received by the owner or owners for whose benefit the well was drilled or operated, after payment of royalty, until the owner or owners drilling or operating the well have been paid the amount due under the terms of the pooling order or order settling such dispute. No part of the production or proceeds accruing to any owner of a separate interest in such unit shall be applied toward payment of any cost properly chargeable to any other interest in said unit.

For the purpose of this section, the owner or owners of oil and gas rights in and under an unloosed tract of land shall be regarded as a lessee to the extent of a seven-eighths (7/8) interest in and to said rights and a lessor to the extent of the remaining one-eighth (1/8) interest therein. Should the owners of separate tracts or interests embraced

within a spacing unit fail to agree upon a pooling of their interests and the drilling of a well on the unit, and should it be established by final, unappealable judgment of a court of competent jurisdiction that the Commission is without authority to require pooling as provided for herein, then, subject to all other applicable provisions of this act, the owner of each tract or interest embraced within a spacing unit may drill on his separately owned tract, and the allowable production therefrom shall be that portion of the allowable for the full spacing unit as the area of such separately owned tract bears to the full spacing unit. In the event a producing well or wells are completed upon a unit where there are, or may thereafter be, two or more separately owned tracts, each royalty interest owner shall share in all production from the well or wells drilled within the unit, or in the gas well rental provided for in the lease covering such separately owned tract or interest in lieu of the customary fixed royalty, to the extent of such royalty interest owner's interest in the unit. Each royalty interest owner's interest in the unit shall be defined as the percentage of royalty owned in each separate tract by the royalty owner, multiplied by the proportion that the acreage in each separately owned tract or interest bears to the entire acreage of the unit.

TITLE 52 O.S § 570.9

Production rights of owner - ownership and payment of proceeds - Working interest owner's rights, duties and liability-Effect of act A. Each owner entitled to produce shall at a minimum have the right to produce separately its proportion interest in monthly production, subject to balancing restriction created by statute, rule, agreement or operation of law; provided however, no provision of the Production Revenue Standards Act shall create a new right for any owner to produce in excess of its proportionate production interest share of the total recoverable reserves from a well. As used herein, an owner is entitled to produce when by right of contract, lease, mineral ownership, Corporation Commission order or operation of law, such owner has acquired or retained a current right to separately contract for dispose of or sell oil or gas from a well. Nothing in the production Revenue Standards Act shall prevent any owner having the right to take production in kind, including a royalty interest owner, from so taking its share of production in kind or create a right to take in kind or use production, which right did not previously exist.

B. Except as otherwise provided by statute, rule, agreement or operation of law proceeds from production, after deduction of royalty proceeds, shall be separately owned by the producing owner and any subsequently created interests attributable to the interests of such owner. A working interest owner shall be responsible for payment and reporting to any subsequently created interest which burdens its working interest.

C. All rights burdens, duties and undertaking attributable to working interest other than the duty of pay royalty proceeds shall remain with such working interest and shall not be communitized pursuant to the Production revenue Standards Act.
D. Notwithstanding any other provisions of the Production Revenue Standards Act. Andy working interest owner that pays or cause to be paid royalty proceeds for gas production in accordance with the production Revenue Standards Act Valued according to the terms of such working interest owner's lease shall be relived from all liability to royalty interest owners for any further payment of proceeds from such production.

TITLE 52 O.S§570.14

Jurisdiction of dist courts - Rulemaking power Corporation Commission - Right of action of injured owner and costs of suit-Statute of limitations

A. The district courts within this state shall have the sole and exclusive jurisdiction to determine the entitlement of any owner in a well to:

1.Its share of proceeds from production; or

2.Damages, interest, court costs, attorneys' fees or allowable litigation expense incurred as a result of the violation of this act.

APPENDIX 1.5

[Record pg 181] APPEAL (Administrative) filed August 7,2000

Pg 1, ¶3 No part of this Appeal can be deemed a waiver of any right, Privilege or Immunity secured by the Constitution of the United States of America; the Constitution of the United States of Oklahoma; nor any Statutory Rights or entitlements.

Pg. 1 ¶5 This case reflects a dispute which is private in nature and does not affect public rights within the jurisdiction of the Commission. Article 7, §7, Oklahoma Constitution.

Pg. 1 ¶6 The report does not recognize the difference between a strict Constitutional case and other cases dealing with flexible contractual law and matters of private rights. Article 9, §34, ¶2, Oklahoma Constitution.

Pg. 1¶7 The Report does not recognize that this case has specifically, timely and continually assertions of all Rights, and therefore, waiver of none, entitling this owner to full constitutionally mandated protections.

Pg. 3 [Record 183] ¶3 In its normal state, a created body under the State Constitution, Article 9 §§15-34, the commission has no jurisdiction over the private rights whatsoever. No jurisdiction over matters of profit sales amounts, bonus amounts, transfer of risk, pay cost or loose some interest, etc.. The Commission has no jurisdiction over matters of private rights nor any other justiciable matter. Article 7, §7, Oklahoma Constitution; LECK vs CONTINENTAL OIL CO., supra; ATLANTIC, supra, at 1096-1097.

Pg. 3 ¶6 The commission has no jurisdiction to cause benefit to a "private company, person or entity" any profit, change of risk, sale prices, bonus amounts, cause a lease status, etc.. Without waiver (Article 2, §23, Okla. Const.) the Commission has no authority over any matter or dispute which is purely private in which the public interest in the common source of supply are not involved.

Pg. 3 ¶8 Constitutional mandate is dominant over any "private rights" findings of the Commission or case law to the contrary. Article 1, §1, Article 9, §34, ¶2, Okla. Const.; U.S. Const., VI, ¶2.

APPENDIX 1.5 (Cont)

PETITION IN ERROR – IN THE SUPREME COURT OF THE STATE OF OKLAHOMA Case No. 95,878

BRIEF

Pg. 4 ¶2 This case, the correlative rights owner reserved and asserted ALL Constitutional and jurisdictional rights prior to commission sitting in its relieved jurisdictional status outside Article 7, §7; Article 2, §23; Article 9, § 34, ¶2 Oklahoma Constitution, over matters of private rights which public interests in common source of supply are not involved. SAMSON RESOURCES CO. vs CORP. COM'N, 702 P. 2d, 19, 23. (Record, page 158.)

Pg. 6 ¶3 It is an undisputable fact that mineral ownership/correlative rights are Constitutionally protected for the full length of the well unless waived. ATLANTIC RICHFIELD CO. vs TOMLINSON, 859 p.2d 1088, 1095; WARD vs CORPORATION COMMISSION, 501 p.2d 503, 507-508; THOMPSON vs CONSOLIDATED GAS UTILITIES CORP., 300 U.S. 55, 57s. ct. 364, 81 L.ED. 510, 523-524; Article 2, §23, Oklahoma Constitution; Amendment 14, U.S. Constitution.

REPLY BRIEF

Pg. 1 ¶3 No part of the Reply brief can deemed a waiver of any Right, Privilege or immunity secured by the Constitution of the United States of America; the Constitution of the State of Oklahoma; nor any state created Statutory Rights or entitlements; an the undersigned continually asserts all Rights at all times and waives none at any time unless expressed in writing.

Pg. 2 ¶4 "Correlative rights" is the term used to specifically define Petitioner's proportion of constitutionally protected mineral ownership in the Common Source of Supply(s). See SAMON RESOURCES CO. VS CORP. CON'N 702 P.2d 19, 22 [1]; Article II, 23 Okla. Const..

Pg. 3 ¶2 Petitioner is entitled to remain clothed with Constitutional Protections for entire length of any activity of production involving petitioner's Correlative Rights in the Common Source of Supply(s). Article II, 23, Okla. Const.

PETITION FOR WRIT OF CERTIORARI

Pg. 1 ¶2 This Petition can not be deemed as waiver of any right, Whatsoever, including all State and Federal Constitutional Rights, Privileges and Immunities Previously and Continuously asserted by Petitioner.

Pg. 2 ¶2 Legislation has mandated that the Oklahoma Corporation Commission (commission) has zero authority over any private matter, right, issue or question regarding entitlement of any owner to share from gross production. Title 52 O.S.

§570.14 (A); Title 52 O.S. §8 7.1; Article 2 §23, Okla. Const..

Pg. 2 ¶3 In case(s) where constitutional protection have NOT been waived, Legislation further mandates specific outcome and limitations upon commission regarding any order in which correlative and gross production rights are issue. Legislation mandates specifically that the Commission's authority stops upon the point at which "until paid" has been satisfied from the non-drilling owner's interest to the drilling person(s). Title 52 O.S. §87.1(e)

Pg. 5 ¶3 Pertinent portions of the Legislative mandate (hereafter, referred to as "specifically authorized to provide until paid" mandated clause), in case where the record reflects that the Commission has no grant to extend its administrative authority over any private matter, issue, right or question, and/or, where the non-drilling owner waived no rights including Article 2, §23, Okla. Const.; Article 9, § 34 ¶2, Okla. Const.; specifically expresses as follows: TITLE 52 O.S. §87.1 (e).

> The Commission specifically authorized to provide that the owner or owners drilling, or a well for the benefit of all shall be entitled to production from such well which would be received by the owner or owners for whose benefit the well was drilled or operated, after payment of royalty until the owners or owners drilling or operating the well have been paid the amount due under the terms of the pooling order or order settling such

dispute. No part of the production or proceeds accruing to any owner of a separate interest in such unit shall be applied toward payment of any cost properly chargeable to any other interest in the said unit.

REPLY TO "ANSWER TO PETITION FOR WRIT OF CERTIORARI"

Pg 1, ¶2 This Petition can not be deemed as waiver of any right, and therefore, all reservations are continually asserted and reserved.